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May 25, 2017

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**VIA ELECTRONIC FILING**

Office of the Clerk  
Ninth Circuit Court of Appeals  
95 Seventh Street  
P.O. Box 193939  
San Francisco, CA 94119

**Re: Robert C. Munoz v. National Labor Relations Board, Case No. 16-71915**

Dear Clerk:

This letter is submitted pursuant to Rule 28(j) with respect to the pending motion to strike a portion of the Petitioner’s and Intervenor’s brief.

It has come to my attention that in a recently issued decision, the National Labor Relations Board addressed the issue which has been raised by the Board in this case.

In *Local 58, IBEW*, 365 NLRB No. 30 (2017), the Board expressly noted in footnote 17 that there is a well “established Board practice to find a violation under the circumstances of this case, where all of the underlying facts are undisputed. The Board, with court approval, has repeatedly found violations for different reasons and on different *theories* from those of administrative law judges or the General Counsel, even in the absence of exceptions, where the unlawful *conduct* was alleged in the complaint. (Citations Omitted)

Here, that is all that the Petitioner and Intervenor has sought to do, consistent with Board practice.

Sincerely,

*/s/ David A. Rosenfeld*

David A. Rosenfeld

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Office of the Clerk  
May 25, 2017  
Page 2

**CERTIFICATE OF SERVICE**

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on May 25, 2017, I electronically filed the foregoing **Rule 28(j) Letter re Local 58, IBEW, 365 NLRB No. 30 (2017)** with the United States Court of Appeals, Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on May 25, 2017.

/s/ Karen Kempler  
Karen Kempler